



**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.**

Date last adopted: **12/6/1995**

Reviewer: **Pat Moses**

Date review completed: **5/20/05**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

- **Rule 189 explains the application of Washington's B&O, public utility, and retail sales taxes on sales to and by the state of Washington, municipal corporations, and related public service enterprises.**

**2. Need:**

<b>YES</b>	<b>NO</b>	
<b>X</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>X</b>	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
<b>X</b>		Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>X</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)



Please explain.

- **The use of tangible personal property donated to a nonprofit charitable organization or state or local governmental entity is exempt of use tax. RCW 82.12.02595. Prior to June 11, 1998 this exemption was only available to the nonprofit charitable organization or state or local governmental entity. On or after June 11, 1998, the statute also provides a use tax exemption for the subsequent use of the property by a person to whom the property is donated or bailed by the nonprofit charitable organization, or state or local governmental entity, if the property is used to further the purpose of that organization. (See chapter 182, laws of 1998.)**
- **Section 189 provides useful tax-reporting information and is necessary to promote consistent application of the statutes involved. It is also necessary to explain the administration of these statutes within the Department of Revenue so that those outside of the agency know what to expect from the department.**

**3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete** Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?



If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

- **ETA 035.04.189 explains that income from a ferry terminal parking lot is subject to the retailing B&O and retail sales taxes, even though the driveways through the parking lot are city streets. This document should be incorporated into the current revision of Section 189 and the ETA should be cancelled.**

**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

- **Departments or institutions of the state are not considered sellers when selling to other departments or institutions of the state (it is considered the same as the state selling to itself). Collection of retail sales tax is not required under those circumstances. There has been recent discussion between state agencies concerning how retail sales or use tax should be remitted to DOR for “sales” under these circumstances. Any future revision of this section might be used to provide direction and clarification in this area.**

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?



Please explain.

- **The department's authority to make and publish rules is contained in RCW 82.01.060(2) and RCW 82.32.300.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

- **The subject matter and taxes addressed in Rule 189 are the specific domain of the Department of Revenue.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

- **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

- **This rule aids taxpayers by giving specific instructions and examples. The rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**



**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

- **RCW 35.82.210 Tax exemption and payments in lieu of taxes -- Definitions.**
- **RCW 82.04.030 "Person," "company."**
- **RCW 82.04.040 "Sale," "casual sale";**
- **RCW 82.04.050 "Sale at retail," "retail sale."**
- **RCW 82.04.060 "Sales at wholesale," "wholesale sale;**
- **RCW 82.04.070 "Gross proceeds of sales";**
- **RCW 82.04.080 "Gross income of the business";**
- **RCW 82.04.110 "Manufacturer";**
- **RCW 82.04.120 "To manufacture";**
- **RCW 82.04.130 "Commercial or industrial use";**
- **RCW 82.04.190 "Consumer";**
- **RCW 82.04.220 Business and occupation tax imposed;**
- **RCW 82.04.230 Tax on extractors;**
- **RCW 82.04.240 Tax on manufacturers;**
- **RCW 82.04.250 Tax on retailers;**
- **RCW 82.04.270 Tax on wholesalers, distributors;**
- **RCW 82.04.280 Tax on . . . extracting or processing for hire;**
- **RCW 82.04.290 Tax on . . . other business or service activities;**
- **RCW 82.04.440 Persons taxable on multiple activities—Credits;**
- **RCW 82.04.397 Exemptions -- Certain materials printed in county, city, or town printing facilities.**
- **RCW 82.04.415 Exemptions -- Sand, gravel and rock taken from county or city pits or quarries, processing and handling costs.**
- **RCW 82.04.418 Exemptions -- Grants by United States government to municipal corporations or political subdivisions.**
- **RCW 82.04.419 Exemptions -- County, city, town, school district, or fire district activity.**
- **RCW 82.04.4291 Deductions -- Compensation received by a political subdivision from another political subdivision for services taxable under RCW 82.04.290.**
- **RCW 82.08.010 Definitions (*Retail sales tax*).**
- **RCW 82.08.020 Tax imposed Retail sales . . .;**
- **RCW 82.08.0254 Exemptions -- Nontaxable sales.**
- **RCW 82.08.0256 Exemptions -- Sale of the operating property of a public utility to the state or a political subdivision.**
- **RCW 82.08.0275 Exemptions -- Sales of and labor and service charges for mining, sorting, crushing, etc., of sand, gravel, and rock from county or city quarry for public road purposes.**
- **RCW 82.08.0278 Exemptions -- Sales between political subdivisions resulting from annexation or incorporation.**



- **RCW 82.08.0271 Exemptions -- Sales to municipal corporations, the state, and political subdivisions of tangible personal property, labor and services on watershed protection and flood prevention contracts.**
- **RCW 82.08.0285 Exemptions -- Sales of ferry vessels to the state or local governmental units -- Components thereof -- Labor and service charges.**
- **RCW 82.08.0291 Exemptions -- Sales of amusement and recreation services or personal services by nonprofit youth organization -- Local government physical fitness classes.**
- **RCW 82.12.010 Definitions;**
- **RCW 82.12.020 Use tax imposed.**
- **RCW 82.12.02595 Exemptions -- Tangible personal property and certain services donated to nonprofit organization or governmental entity.**
- **RCW 82.12.0269 Exemptions -- Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.**
- **RCW 82.16.010 Definitions.**

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 035.04.189 Municipal income from meters in a ferry terminal parking lot.**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **None**

Administrative Decisions (e.g., WTDs):

- **19 WTD 34 (2000) -- A non-corporate state board is treated for B&O tax purposes as other non-corporate state agencies, such as departments and institutions of higher learning. Accordingly, B&O tax is not imposed on the fees a board may charge for the services it provides in accordance with its legislative mandate.**
- **19 WTD 136 (2000) -- A municipal program that is subsidized by more than 50% of its costs is not enterprise activity. Non-enterprise activities are exempt from B&O tax, but not from retail sales tax.**

Attorney General's Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **None**



**10. Review Recommendation:**

- ☒ Amend
- ☐ Repeal
- ☐ Leave as is
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

- **Rule 189 should be amended to include ETA 035.04.189 Municipal income from meters in a ferry terminal parking lot. At the same time the rule can be restructured and reformatted for greater clarity.**
- **The use of tangible personal property donated to a nonprofit charitable organization or state or local governmental entity is exempt of use tax. RCW 82.12.02595. Prior to June 11, 1998 this exemption was only available to the nonprofit charitable organization or state or local governmental entity. On or after June 11, 1998, the statute also provides a use tax exemption for the subsequent use of the property by a person to whom the property is donated or bailed by the nonprofit charitable organization, or state or local governmental entity, if the property is used to further the purpose of that organization. (See chapter 182, laws of 1998.) Rule 189 should be amended to include this statutory change.**

**11. Manager action:** Date: June 8, 2005

- ☐ Reviewed recommendation      ☒ AL Accepted recommendation
- ☐ Returned for further action

Comments:

**Priority 2**